

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TRINIDAD R. GONZALEZ, )  
Plaintiff, ) No. CV-10-348-JPH  
v. )  
MICHAEL J. ASTRUE, ) ORDER GRANTING PLAINTIFF'S  
Commissioner of Social Security, ) MOTION FOR SUMMARY  
Defendant. ) JUDGMENT AND REMANDING FOR  
PURSUANT TO SENTENCE FOUR 42  
U.S.C. § 405(g)  
)

BEFORE THE COURT are cross-Motions for Summary Judgment. (ECF No. 14, 17.) Attorney Jeffrey Schwab represents plaintiff; Special Assistant United States Attorney David I. Blower represents defendant. The parties have consented to proceed before a magistrate judge. (ECF No. 6.) After reviewing the administrative record and briefs filed by the parties, the court **GRANTS** plaintiff's Motion for Summary Judgment and **DENIES** defendant's Motion for Summary Judgment.

**JURISDICTION**

Plaintiff Trinidad R. Gonzalez (plaintiff) protectively filed for supplemental security income (SSI) and disability insurance benefits (DIB) on March 13, 2008. (Tr. 21.) Plaintiff alleged an onset date of October 15, 2007. (Tr.139, 143.) Benefits were denied initially and on reconsideration. (Tr. 79, 83, 85.) Plaintiff requested a hearing before an administrative law judge (ALJ), which was held before ALJ Jean R. Kerins on March 17, 2010. (Tr. 39-63.) Plaintiff was represented by counsel and testified at the hearing. (Tr. 43-55.) Vocational expert John Yen also testified. (Tr. 57-62.) The ALJ denied benefits (Tr. 21-32.) and the Appeals Council denied review. (Tr. 1.) The matter is now before this court

1 pursuant to 42 U.S.C. § 405(g).

## 2 STATEMENT OF FACTS

3 The facts of the case are set forth in the administrative hearing transcripts, the ALJ decisions, and  
4 the briefs of plaintiff and the Commissioner, and will therefore only be summarized here.

5 Plaintiff was 47 years old at the time of the hearing. (Tr. 43.) He has very little formal schooling  
6 and Spanish is his primary language. (Tr. 43.) He testified he stopped working because his legs and his  
7 brain hurt and made him very tired. (Tr. 46.) Plaintiff has work experience picking produce, in hotel  
8 housekeeping, and packing fruit. (Tr. 44, 49.) He takes ibuprofin for the pain in his head. (Tr. 47.) He  
9 takes medication for blood pressure, diabetes, cholesterol, and for spots on his skin. (Tr. 47.) Plaintiff  
10 testified he is depressed and experiences panic and anxiety. (Tr. 47, 53.) Sometimes he is so depressed  
11 he does not want to do anything. (Tr. 55.) Plaintiff applied for benefits because he cannot work and is  
12 not able to work because he feels bad. (Tr. 48.)

## 13 STANDARD OF REVIEW

14 Congress has provided a limited scope of judicial review of a Commissioner's decision. 42  
15 U.S.C. § 405(g). A Court must uphold the Commissioner's decision, made through an ALJ, when the  
16 determination is not based on legal error and is supported by substantial evidence. *See Jones v. Heckler*,  
17 760 F. 2d 993, 995 (9<sup>th</sup> Cir. 1985); *Tackett v. Apfel*, 180 F. 3d 1094, 1097 (9<sup>th</sup> Cir. 1999). "The  
18 [Commissioner's] determination that a plaintiff is not disabled will be upheld if the findings of fact are  
19 supported by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup> Cir. 1983) (citing 42  
20 U.S.C. § 405(g)). Substantial evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d  
21 1112, 1119 n. 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d 599,  
22 601-602 (9<sup>th</sup> Cir. 1989); *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d 573, 576 (9<sup>th</sup>  
23 Cir. 1988). Substantial evidence "means such relevant evidence as a reasonable mind might accept as  
24 adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations omitted).  
25 "[S]uch inferences and conclusions as the [Commissioner] may reasonably draw from the evidence" will  
26 also be upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On review, the Court considers  
27 the record as a whole, not just the evidence supporting the decision of the Commissioner. *Weetman v.*  
28 *Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989) (*quoting Kornock v. Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

1 It is the role of the trier of fact, not this Court, to resolve conflicts in evidence. *Richardson*, 402  
 2 U.S. at 400. If evidence supports more than one rational interpretation, the Court may not substitute its  
 3 judgment for that of the Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
 4 (9<sup>th</sup> Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be set aside if the  
 5 proper legal standards were not applied in weighing the evidence and making the decision. *Brawner v.*  
 6 *Sec'y of Health and Human Services*, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). Thus, if there is substantial  
 7 evidence to support the administrative findings, or if there is conflicting evidence that will support a  
 8 finding of either disability or nondisability, the finding of the Commissioner is conclusive. *Sprague v.*  
 9 *Bowen*, 812 F.2d 1226, 1229-30 (9<sup>th</sup> Cir. 1987).

#### 10 SEQUENTIAL PROCESS

11 The Social Security Act (the “Act”) defines “disability” as the “inability to engage in any  
 12 substantial gainful activity by reason of any medically determinable physical or mental impairment which  
 13 can be expected to result in death or which has lasted or can be expected to last for a continuous period  
 14 of not less than 12 months.” 42 U.S.C. §§ 423 (d)(1)(A), 1382c (a)(3)(A). The Act also provides that  
 15 a plaintiff shall be determined to be under a disability only if his impairments are of such severity that  
 16 plaintiff is not only unable to do his previous work but cannot, considering plaintiff’s age, education and  
 17 work experiences, engage in any other substantial gainful work which exists in the national economy.  
 18 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B). Thus, the definition of disability consists of both medical  
 19 and vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001).

20 The Commissioner has established a five-step sequential evaluation process for determining  
 21 whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step one determines if he or she is  
 22 engaged in substantial gainful activities. If the claimant is engaged in substantial gainful activities,  
 23 benefits are denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I).

24 If the claimant is not engaged in substantial gainful activities, the decision maker proceeds to step  
 25 two and determines whether the claimant has a medically severe impairment or combination of  
 26 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the claimant does not have a severe  
 27 impairment or combination of impairments, the disability claim is denied.

28 If the impairment is severe, the evaluation proceeds to the third step, which compares the

1 claimant's impairment with a number of listed impairments acknowledged by the Commissioner to be  
 2 so severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii);  
 3 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or equals one of the listed impairments, the  
 4 claimant is conclusively presumed to be disabled.

5 If the impairment is not one conclusively presumed to be disabling, the evaluation proceeds to  
 6 the fourth step, which determines whether the impairment prevents the claimant from performing work  
 7 he or she has performed in the past. If plaintiff is able to perform his or her previous work, the claimant  
 8 is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's residual  
 9 functional capacity ("RFC") assessment is considered.

10 If the claimant cannot perform this work, the fifth and final step in the process determines whether  
 11 the claimant is able to perform other work in the national economy in view of his or her residual  
 12 functional capacity and age, education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
 13 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

14 The initial burden of proof rests upon the claimant to establish a *prima facie* case of entitlement  
 15 to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971); *Meanel v. Apfel*, 172 F.3d  
 16 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is met once the claimant establishes that a physical or  
 17 mental impairment prevents him from engaging in his or her previous occupation. The burden then  
 18 shifts, at step five, to the Commissioner to show that (1) the claimant can perform other substantial  
 19 gainful activity and (2) a "significant number of jobs exist in the national economy" which the claimant  
 20 can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup> Cir. 1984).

## 21 ALJ'S FINDINGS

22 At step one of the sequential evaluation process, the ALJ found plaintiff has engaged in  
 23 substantial gainful activity after the alleged onset date. (Tr. 23.) At step two, the ALJ found plaintiff has  
 24 the following severe impairments: depression and psoriasis. (Tr. 25.) At step three, the ALJ found that  
 25 plaintiff does not have an impairment or combination of impairments that meets or medically equals one  
 26 of the listed impairments in 20 C.F.R. Part 404, Subpt. P, App. 1. (Tr. 25.) The ALJ then determined:

27 [T]he claimant has the residual functional capacity to lift and carry 25  
 28 pounds frequently, 50 pounds occasionally; to stand and walk for six hours  
 and to sit for six hours out of an eight hour day; to push and pull within  
 the limits of lifting and carrying; to engage in a full range of postural

1 moments [sic] frequently, to manipulate, see and communicate without  
 2 restriction; to work within any environment; to understand, recall and  
 3 carryout [sic] simple instructions; to make simple work related judgments;  
 to adjust to occasional work changes; and to interact occasionally with the  
 general public.

4 (Tr. 26.) At step four, the ALJ found plaintiff is capable of performing past relevant work. (Tr. 31.) As  
 5 a result, the ALJ concluded plaintiff has not been under a disability as defined in the Social Security Act  
 6 from September 1, 2005 through the date of the decision. (Tr. 32.)

## 7 ISSUES

8 The question is whether the ALJ's decision is supported by substantial evidence and free of legal  
 9 error. Specifically, plaintiff asserts the ALJ erred by: (1) determining plaintiff engaged in substantial  
 10 gainful activity after the alleged onset date; and (2) failing to conclude plaintiff's mental health problems  
 11 are disabling. (ECF No. 14 at 4-13.) Defendant asserts the ALJ: (1) properly determined plaintiff  
 12 engaged in substantial gainful activity after the alleged onset date; and (2) reasonably concluded  
 13 plaintiff's mental impairments are not disabling. (ECF No. 17 at 11-21.)

## 14 DISCUSSION

### 15 **1. Step One and Substantial Gainful Activity**

16 Plaintiff argues the ALJ erred in determining he engaged in substantial gainful activity after the  
 17 application date because his work was an unsuccessful work attempt. (Ct. Rec. 14 at 4-7.) If a claimant  
 18 can engage in substantial gainful activity, the claimant is not disabled within the meaning of the Social  
 19 Security Act. *Tackett v. Apfel* 180 F.3d 1094, 1098 (9<sup>th</sup> Cir. 1999); 20 C.F.R. § 404.1571. Substantial  
 20 gainful activity is work activity that "involves doing significant physical or mental activities" on a full-  
 21 or part-time basis, and "is the kind of work usually done for pay or profit." 20 C.F.R. §§ 404.1572,  
 22 416.972. Generally, if a claimant works for substantial earnings as described in the regulations, the work  
 23 is found to be substantial gainful activity. 20 C.F.R. §§ 404.1574(a), 416.974(a). Although the ALJ  
 24 found plaintiff had engaged in substantial gainful activity after the application date, she declined to make  
 25 an unfavorable decision at step one. (Tr. 24.) As a result, the ALJ completed the sequential analysis and  
 26 concluded plaintiff is not disabled based on the medical evidence, not based on substantial gainful  
 27 activity. (Tr. 24-32.) Because the ALJ found in plaintiff's favor at step one, this is not an appealable  
 28 issue. See e.g., *Burch v. Barnhart*, 400 F.3d 676, 682 (9<sup>th</sup> Cir.2005) (plaintiff is not prejudiced when the

1 ALJ resolves a step in plaintiff's favor).

2 Notwithstanding, the ALJ did analyze plaintiff's earnings and made conclusions based on the  
 3 substantial gainful activity which were applied to the credibility assessment. (Tr. 24-25.) The ALJ  
 4 stated plaintiff earned \$5,505 in the third quarter of 2009, an average of \$1,835 per month over three  
 5 months. (Tr. 24.) For the fourth quarter of 2009, the ALJ concluded plaintiff earned \$1,834.<sup>1</sup> (Tr. 24.)  
 6 The ALJ combined the third and fourth quarters of 2009 for total earnings of \$7,339, an average of  
 7 \$1,223 per month over six months. Income is considered "substantial" for 2009 if it exceeds \$980 per  
 8 month. *See Program Operations Manual System (POMS) DI 10501.015.B, available at*  
 9 <https://secure.ssa.gov/apps10/poms.nsf/lnx/0410501015>. Thus, based on the ALJ's calculations, plaintiff  
 10 engaged in substantial gainful activity during the third and fourth quarters of 2009.

11 However, comparison of the earnings report in the record to the list of earnings identified by the  
 12 ALJ reveals several errors.<sup>2</sup> (Tr. 24, 151-52.) Earnings of \$355 from Stemilt Growers and \$1,016 from  
 13 Columbia and Okanogan are third quarter 2008 earnings and should not be included in the calculations  
 14 for 2009. (Tr. 24, 152.) Earnings totaling \$140 from Lone Pine Orchard are not found in the earnings  
 15 record, and the amount from Cachu Orchards in third quarter 2009 is actually \$527, not \$570 as listed  
 16 by the ALJ. (Tr. 151-52.)

17 A more accurate calculation of third quarter 2009 earnings includes the following:

Dixieland Cherries	\$104
Harvey Estep Orchard	\$855
G&P Orchard Leasing	\$315
Jim Talbot Orchards	\$120
B&R Banning	\$270
Cachu Orchard	\$527
McDougall & Sons	\$1,562

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22           <sup>1</sup>The ALJ cited earnings from Columbia and Okanogan of \$1,694 and from Cachu Orchard of  
 23 \$140 which total \$1,835 for the fourth quarter of 2009. (Tr. 24.)

24           <sup>2</sup>The earnings record and the ALJ's calculations lend themselves to confusion. The ALJ cited  
 25 Exhibits 7D, 8D and 9D as the basis for the determination of significant work activity. (Tr. 23.)  
 26 However, the record contains no Exhibit 9D. (Court Transcript Index, Tr. 154-55.) Further, Exhibit 8D  
 27 consists of four pages; however, pages three and four of Exhibit 8D appear to duplicate pages one and  
 28 two of the same exhibit.

1	Lone Pine Orchards	\$198
		<u>\$3,951</u>

2 (Tr. 152-53.) Average earnings over the quarter are \$1,317 per month. Despite the ALJ's errors, the  
 3 record reflects earnings exceeding the amount constituting substantial gainful activity in third quarter  
 4 2009.

5 For fourth quarter 2009, the record reflects only two entries of \$140 each from Cachu Orchard  
 6 for fourth quarter 2009. (Tr. 153.) Earnings of \$1,694 from Columbia and Okanogan are actually from  
 7 fourth quarter 2008, not fourth quarter 2009 as reported by the ALJ. (Tr. 154.) Thus, based on the  
 8 record, plaintiff earned \$280 in the fourth quarter of 2009. Total earnings for the third and fourth quarter  
 9 of 2009 equal \$4,231. Averaged over six months, earnings for the second half of 2009 are \$705 per  
 10 month, less than the amount presumed for substantial gainful activity. Thus, the record actually shows  
 11 only three months of average substantial gainful activity in the third quarter of 2009, not six months as  
 12 asserted by the ALJ.<sup>3</sup>

13 Plaintiff argues *Gatliff v. Comm'r*, 172 F.3d 690 (9<sup>th</sup> Cir. 1999) dictates a finding that three  
 14 months of earnings does not establish the ability to perform substantial gainful activity on a sustained  
 15 basis. (ECF No. 14-7.) However, as defendant correctly points out, *Gatliff* is distinguishable. The  
 16 *Gatliff* court noted the plaintiff could work full-time but was incapable of sustaining employment for  
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18       <sup>3</sup>Plaintiff argues there is no evidence the earnings reported under plaintiff's social security number  
 19 are actually plaintiff's earnings. (ECF No. 14 at 6.) There is no factual basis for this assertion in the  
 20 record, including plaintiff's own testimony. *See, e.g., Velasquez v. Astrue*, No. CV 09-7122-JC, 2010  
 21 WL 3928755 \*4 (C.D. Cal. October 6, 2010) (plaintiff submitted evidence of identity theft); *Gray v.*  
 22 *Barnhart*, No. Civ. 02-591-SLR, 2004 WL 334230 \*4 (D.Del. February 5, 2004) (plaintiff submitted  
 23 evidence income was not earnings). Ambiguous evidence, or the ALJ's own finding that the record is  
 24 inadequate to allow for proper evaluation of the evidence, triggers the ALJ's duty to "conduct an  
 25 appropriate inquiry." *Smolen v. Chater*, 80 F.3d 1273, 1288 (9<sup>th</sup> Cir. 1996); *Armstrong v. Comm'r of Soc.*  
 26 *Sec. Admin.*, 160 F.3d 587, 590 (9th Cir.1998). The ALJ has no obligation to develop the record just  
 27 because plaintiff's testimony about the specifics of his past work was vague. The earnings record, though  
 28 perhaps difficult to read, is not ambiguous and the ALJ is entitled to rely on the evidence in the record.

1 longer than two months. *Gatliff*, 172 F.3d at 693. In the case at hand, plaintiff testified his last  
 2 job as a cherry packer ended because the job was seasonal. (Tr. 50.) He also testified he thought he  
 3 could go back to cherry packing. (Tr. 51.) This does not necessarily suggest an inability to sustain  
 4 employment over a longer term.

5 Although the ALJ made some errors in calculating earnings, the court need not determine whether  
 6 three months of earnings constitutes substantial gainful activity in this case. The issue of whether  
 7 plaintiff performed substantial gainful activity or made an unsuccessful work attempt after the application  
 8 date is not properly before the court. The nondisability determination is not based on a finding that  
 9 plaintiff engaged in substantial gainful activity. Instead, the ALJ compared the earnings record to  
 10 plaintiff's testimony and concluded the evidence reflects negatively on plaintiff's credibility. (Tr. 24-25.)  
 11 Plaintiff has not challenged the credibility finding.<sup>4</sup> Thus, despite some errors in calculations at step one,  
 12 the errors are harmless because the ALJ did not make the nondisability determination on that basis. See  
 13 *Carmickle v. Comm'r, Soc. Sec. Admin*, 533 F.3d 1155, 1162 (9th Cir. 2008); *Stout v. Comm'r, Soc. Sec.*  
 14 *Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006); *Batson v. Comm'r Soc. Sec. Admin*, 359 F.3d 1190, 1195-  
 15 97 (9th Cir. 2004).

## 16 2. Mental Health and Disability

17 Plaintiff argues the evidence dictates a determination that he is disabled by mental impairments  
 18 alone. (ECF No. 14 at 8-13.) Plaintiff cites evidence from Dr. Genthe, Dr. Goodwin, and Dr. Mitchell,

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20       <sup>4</sup>If the ALJ finds that the claimant's testimony as to the severity of his pain and impairments is  
 21 unreliable, the ALJ must make a credibility determination with findings sufficiently specific to permit  
 22 the court to conclude that the ALJ did not arbitrarily discredit claimant's testimony. *Morgan v. Apfel*, 169  
 23 F.3d 595, 601-02 (9<sup>th</sup> Cir. 1999). In the absence of affirmative evidence of malingering, the ALJ's reasons  
 24 must be "clear and convincing." *Lingenfelter v. Astrue*, 504 F.3d 1028, 1038-39 (9<sup>th</sup> Cir. 2007); *Vertigan*  
 25 *v. Halter*, 260 F.3d 1044, 1050 (9<sup>th</sup> Cir. 2001); *Morgan*, 169 F.3d at 599. The ALJ cited the lack of  
 26 supporting evidence for plaintiff's allegations of leg pain and plaintiff's ability to work outside during  
 27 the hottest part of the year at a substantial gainful activity level in support of the credibility finding. (Tr.  
 28 30-31.)

1 among other providers. (ECF No. 14 at 8-13.) Defendant argues the ALJ made a reasonable RFC  
 2 determination which takes into account the limitations found in the mental health evidence. (ECF No.  
 3 17 at 14-20).

4 In disability proceedings, a treating physician's opinion carries more weight than an examining  
 5 physician's opinion, and an examining physician's opinion is given more weight than that of a non-  
 6 examining physician. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9<sup>th</sup> Cir. 2004); *Lester v. Chater*, 81 F.3d  
 7 821, 830 (9th Cir. 1995). If the treating or examining physician's opinions are not contradicted, they can  
 8 be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the opinion  
 9 can only be rejected for "specific" and "legitimate" reasons that are supported by substantial evidence  
 10 in the record. *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9<sup>th</sup> Cir. 1995). Historically, the courts have  
 11 recognized conflicting medical evidence, the absence of regular medical treatment during the alleged  
 12 period of disability, and the lack of medical support for doctors' reports based substantially on a  
 13 claimant's subjective complaints of pain as specific, legitimate reasons for disregarding a treating or  
 14 examining physician's opinion. *Flaten v. Secretary of Health and Human Servs.*, 44 F.3d 1453, 1463-64  
 15 (9th Cir. 1995); *Fair*, 885 F.2d at 604. Although the ALJ summarized records from medical sources in  
 16 the record, the ALJ rejected only the opinion of Dr. Rahme and did not specifically assign weight to any  
 17 other treating or examining physician or psychologist.<sup>5</sup> (Tr. 27-31.) Therefore, presumably the ALJ  
 18 accepted the opinions of Dr. Genthe, Dr. Goodwin, and Dr. Mitchell as well as other providers in the  
 19 record.

20 The ALJ summarized Dr. Genthe's opinion based on an examination in May 2007. (Tr. 27-28.)  
 21 Dr. Genthe noted history of depressive symptoms, nervousness and anxiety, but reported an overall  
 22 normal mental status. (Tr. 199.) Dr. Genthe found no significant impairment in the ability to understand,  
 23 remember and follow simple instructions and the ability to follow complex instructions also seemed  
 24 intact. (Tr. 200.) Plaintiff's ability to learn new tasks, perform routine tasks, exercise judgment and  
 25 make decisions was unimpaired. (Tr. 200.) Plaintiff reported working five hours per day and said he was

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 27       <sup>5</sup>The ALJ did assign weight to the opinion of Dr. Gentile, the state reviewing physician. (Tr. 31,  
 28 289-91.)

1 not working full-time because of pain in his legs and sores. (Tr. 201.) Dr. Genthe assessed a cognitive  
 2 GAF of 75, emotional GAF of 70, and interpersonal GAF of 85.<sup>6</sup> Although plaintiff argues Dr. Genthe's  
 3 opinion indicates plaintiff is limited to five hours of work per day and plaintiff is not capable of  
 4 sustaining full-time employment (ECF No. 14 at 8.), the court agrees with defendant that the reasonable  
 5 reading of the report suggests that Dr. Genthe was reporting plaintiff's current work status. (ECF NO.  
 6 17 at 16-17.) The functional abilities described by Dr. Genthe are consistent with the ALJ's RFC finding.

7 However, the ALJ failed to adequately address other opinions about plaintiff's mental health  
 8 which suggest more significant limitations. The ALJ summarized the medical evidence but did not note  
 9 conflicts, analyze, or otherwise explain the weight given to any other medical provider. (Tr. 23-25.)  
 10 "The ALJ must do more than offer his conclusions. He must set forth his own interpretations and explain  
 11 why they, rather than the doctors', are correct." *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9<sup>th</sup> Cir. 1988).  
 12 The ALJ failed to do so here. Significantly, the ALJ failed to analyze the opinion of Dr. Goodwin who  
 13 completed a DSHS Psychological/Psychiatric Evaluation on December 20, 2007. (Tr. 210-14.) Dr.  
 14 Goodwin diagnosed major depressive disorder, recurrent, moderate-severe. (Tr. 210.) He opined  
 15 plaintiff has four moderate and one marked cognitive limitation and three moderate, one marked, and one  
 16 severe social limitation. (Tr. 211.) His narrative report notes severe deficits in attention and  
 17 concentration and that comprehension of simple commands was moderately impaired. (Tr. 213.) There  
 18 was evidence of impairment of plaintiff's short term memory. (Tr. 213.) Dr. Goodwin noted plaintiff  
 19 was socially isolated and dependent and recommended re-evaluation of his psychiatric medications. (Tr.  
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23       <sup>6</sup>A GAF score of 61-70 indicates "some mild symptoms, (e.g., depressed mood and mild  
 24 insomnia) OR some difficulty in social, occupational, or school functioning (e.g., occasional truancy, or  
 25 theft within the household), but generally functioning pretty well, has some meaningful interpersonal  
 26 relationships." A GAF score of 71-80 indicates no more than slight impairment in social, occupational  
 27 or school functioning. A GAF score of 81-90 indicates no or minimal symptoms and good functioning  
 28 in all areas. DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, 4<sup>TH</sup> Ed. at 32.

1 214.) Dr. Goodwin assessed a GAF of 45.<sup>7</sup> Although the ALJ summarized Dr. Goodwin's report,  
 2 specifically noting severe deficits in attention and concentration among other impairments, the ALJ failed  
 3 to explain why those deficits were not included in the RFC. (Tr. 29.)

4 Defendant argues the ALJ implicitly gave Dr. Goodwin's opinion little weight and cited several  
 5 possible reasons for doing so. (ECF No. 17 at 17-18.) The court may make inferences from the ALJ's  
 6 discussion of the evidence, if the inferences are there to be drawn. *Magallanes v. Bowen*, 881 F.2d 747,  
 7 755 (9<sup>th</sup> Cir. 1989). While the ALJ's failure to incorporate limitations assessed by Dr. Goodwin into the  
 8 RFC suggests the ALJ rejected them, the ALJ failed to cite a single specific, legitimate reason supported  
 9 by substantial evidence for rejecting Dr. Goodwin's findings. Such reasons may exist, but the court is  
 10 constrained to review only those reasons asserted by the ALJ. *Sec. Exch. Comm'n v. Chenery Corp.*, 332  
 11 U.S. 194, 196 (1947); *Pinto v. Massanari*, 249 F.3d 840, 847-48 (9<sup>th</sup> Cir. 2001). The court cannot infer  
 12 specific, legitimate reasons where none are suggested or implied by the ALJ's discussion of the evidence.

13 Similarly, the ALJ summarized office visit notes from Dr. Mitchell in November 2007 but failed  
 14 to discuss the mental health findings. (Tr. 28.) The ALJ reported Dr. Mitchell noted plaintiff claimed  
 15 he was disabled only "because of pain in his knees and neck." (Tr. 28.) However, Dr. Mitchell indicated  
 16 plaintiff "also relates disability related to depression." (Tr. 207.) Dr. Mitchell found no objective  
 17 evidence of the joint pain complained of by plaintiff, but opined, "His depression may be his greatest  
 18 obstacle to working on a full-time basis." (Tr. 208.) The ALJ did not analyze or address Dr. Mitchell's  
 19 opinion with regard to plaintiff's mental health issues, although Dr. Mitchell suggests they may be  
 20 significant.

21 On the whole, the ALJ's discussion of the medical evidence lacked the specificity required to  
 22 allow the court to review the ALJ's reasoning. A summary of medical evidence does not constitute a  
 23 legally sufficient explanation of the basis for the ALJ's decision. On remand, the ALJ should weigh the  
 24 medical and psychological evidence and provide specific, legitimate reasons supported by substantial

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 26       <sup>7</sup>A GAF score of 41-50 indicates serious symptoms or any serious impairment in social,  
 27 occupation, or school functioning. *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS*, 4<sup>TH</sup>  
 28 Ed. at 32.

1 evidence for rejecting the opinion of any acceptable medical source. The ALJ should also revisit step  
2 one and the rest of the sequential process to ensure factual accuracy and compliance with all relevant  
3 authority.

4 **CONCLUSION**

5 The ALJ's decision is not supported by substantial evidence and free of legal error. The decision  
6 lacks a legally sufficient explanation of the findings. Remand is necessary for reconsideration of the  
7 medical and psychological opinion evidence. The ALJ shall issue a new decision which explains the  
8 findings and accurately cites substantial evidence supporting his conclusions throughout the sequential  
9 process.

10 Accordingly,

11 **IT IS ORDERED:**

- 12 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 14**) is **GRANTED**. The matter is  
13 remanded to the Commissioner for additional proceedings pursuant to sentence four 42 U.S.C. 405(g).
- 14 2. Defendant's Motion for Summary Judgment (**Ct. Rec. 17**) is **DENIED**.
- 15 3. An application for attorney fees may be filed by separate motion.

16 The District Court Executive is directed to file this Order and provide a copy to counsel for  
17 plaintiff and defendant. Judgment shall be entered for plaintiff and the file shall be **CLOSED**.

18 DATED March 2, 2012

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20 S/ JAMES P. HUTTON  
21 UNITED STATES MAGISTRATE JUDGE  
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